

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2207 and 2208 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DUDH SAGAR DAIRY!S EMPLOYEES CREDIT & SUPPLY CO OP SOCIETY

Versus

ASST COMMR OF INCOME TAX

Appearance:

MR KA PUJ for Petitioner

MR MANISH R BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 28/04/99

ORAL JUDGEMENT

#. These Special Civil Applications are by the same person who challenges the notices issued by the Assessing Officer on 24.2.95 respectively for assessment year 1988-89 to 1990-91. The assessee has filed returns for the two years in which it claimed the bonus paid to its

members as deductible expenditure which was originally allowed by the assessing officer. However, on 19.9.94, the Assessing Officer issued a notice called upon the assessee that in his opinion the deduction such as bonus paid and death benefit paid to the members are inadmissible expenditure which have wrongfully been allowed, for that reason why assessment for the assessment years 1988-89 to 1990-91 should not be reopened.

#. The assessee replied to show cause notice. However Assessing Officer disagreeing with the assessee's reply issued impugned notice on 24.2.95. Though no separate reasons as required under Section 148(2) to be recorded before issuance of notice have been placed on record, considering the show cause notice to be the reasons for reopening, it is apparent that recourse to exercise of power under Section 148 read with Section 147 is not on account of entertainment of belief that income chargeable to tax has escaped assessment as a result of failure on the part of assessee to disclose truly and fully all material facts necessary for the assessment of the relevant assessment years. The case falls within the proviso to Section 147; which prohibits taking of any action under Section 147 for the assessment, reassessment or recomputation of the income of an assessee for any assessment year after the expiry of four years from the end of relevant assessment year where escapement of income chargeable to tax is not attributable to any failure on the part of assessee to disclose truly and fully all material facts. In these circumstances, notices is issued on 24.2.1995 under Section 148 for initiating proceedings under Section 147 in respect of assessment year 1988-89 and 1989-90 are beyond the permissible time within which the proceedings could have been initiated for these two assessment years. The assumption of jurisdiction by the Assessing Officer is therefore vitiated and the impugned notice must be held without jurisdiction and in violation of Section 147.

#. As a result these petitions succeed and the impugned notices are quashed.

There shall be no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)